

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 PRISCELLA R. SAINTAL,

Case No.: 2:13-cv-01295-APG-VCF

4 Petitioner

Order

5 v.

6 DWIGHT NEVEN, et al.,

7 Respondents.

8
9 Priscella Saintal, a Nevada prisoner, filed a petition for a writ of habeas corpus under 28
10 U.S.C. § 2254. I deny Saintal’s habeas petition and deny her a certificate of appealability.

11 **I. BACKGROUND**

12 On March 28, 2006, Saintal was observed entering a Coach Factory Outlet store in Clark
13 County, Nevada and placing a “swingpack” purse in her pants and a wallet in her own purse.
14 ECF No. 14-2 at 86-90, 128.¹ Saintal purchased two wristlets from the store, and as she was
15 exiting the store, she set off the security alarm. *Id.* at 93. After Saintal’s purchased items failed
16 to set off the security alarm when management tested them, Saintal was asked to hand over her
17 own purse. *Id.* at 149, 151-52. Saintal refused and left the store without her purchases. *Id.* at
18 152-53. The store manager followed Saintal to her vehicle and alerted security and law
19 enforcement. *Id.* at 153. After law enforcement arrived, Saintal agreed to exit her vehicle and go
20 back through the security alarm. *Id.* at 155. Saintal did not set off the alarm and agreed to let law
21 enforcement search her vehicle. *Id.* at 156, 208-09. As they were walking back to Saintal’s
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 ¹ All page citations herein are to the CM/ECF generated document page number in the
page header, not to any page number in the original transcript or document.

1 vehicle, her husband was observed in her vehicle and was found with Coach packaging materials
2 and price tags in his hands. *Id.* at 209-11. The stolen wallet was recovered from a glovebox in
3 Saintal's vehicle and the stolen "swingpack" purse was found in Saintal's husband's vehicle
4 nearby. *Id.* at 213, 218.

5 On March 12, 2007, following a jury trial, Saintal was found guilty of burglary, grand
6 larceny, possession of stolen property with a value less than \$250.00, and conspiracy to possess
7 stolen property. ECF No. 13-2 at 41-42. The count of possession of stolen property was later
8 dismissed. *See* ECF No. 13-2 at 104. Saintal was adjudged guilty of being a habitual criminal
9 and was sentenced to life with parole eligibility after ten years for the burglary conviction, life
10 with parole eligibility after ten years for the grand larceny conviction, and twelve months in the
11 Clark County Detention Center for the conspiracy conviction. *Id.* All counts were ordered to run
12 concurrently. *Id.* Saintal appealed, and the Supreme Court of Nevada affirmed on June 30, 2009.
13 ECF No. 13-2 at 231. Remittitur issued on December 29, 2009. ECF No. 13-3 at 33.

14 Saintal filed a state habeas petition on May 6, 2010. ECF No. 13-3 at 78. On June 28,
15 2011, she filed a counseled supplement to her petition. ECF No. 13-4 at 2. Following an
16 evidentiary hearing, the state district court denied Saintal's petition. ECF No. 13-5 at 2; ECF No.
17 13-5 at 98. She appealed, and the Supreme Court of Nevada affirmed on April 10, 2013. ECF
18 No. 13-5 at 190. Remittitur issued on May 9, 2013. ECF No. 13-5 at 195.

19 Saintal dispatched her federal habeas petition for filing on or about July 18, 2013. ECF
20 No. 3. She filed an amended petition on October 8, 2013. ECF No. 4. She moved for bail or
21 release pending a decision in this case and "to proceed with appeal on original records of
22 appeals." ECF Nos. 9, 10. The respondents moved to dismiss Saintal's amended petition. ECF
23 No. 12. On March 2, 2015, I denied Saintal's motion for bail or release, her "motion to proceed

1 with appeal on original records of appeals,” and the respondents’ motion to dismiss without
2 prejudice, and I appointed counsel for Saintal. ECF No. 19.

3 Saintal filed a counseled, amended petition on January 19, 2016. ECF No. 29. The
4 respondents moved to dismiss the amended petition, which I granted in part. ECF Nos. 35, 44.
5 Specifically, I dismissed Ground Six as untimely, held that Ground Eight was unexhausted, and
6 held that Ground Ten was unexhausted except to the extent that it alleged cumulative error based
7 on claims of ineffective assistance of counsel. *Id.* at 8. Saintal moved for dismissal of Ground
8 Eight and partial dismissal of Ground Ten pursuant to my order. ECF No. 45. I granted that
9 motion, dismissing Ground Eight and Ground Ten, except to the extent it was based on the
10 cumulative effect of ineffective assistance of counsel. ECF No. 47. The respondents answered
11 the remaining grounds in Saintal’s petition on March 7, 2018. ECF No. 54. Saintal replied on
12 June 20, 2018. ECF No. 59.

13 In the remaining grounds for relief, Saintal alleges the following violations of her federal
14 constitutional rights:

- 15 1. Her trial counsel was ineffective for misadvising her about the effect of the
State’s notice of intent to seek habitual criminal charges.
- 16 2. The state district court improperly sentenced her as a habitual criminal.
- 17 3. The jury’s verdicts were inconsistent.
- 18 4. The two life sentences she received for stealing a purse and wallet violate
the prohibition against cruel and unusual punishment.
- 19 5. Her trial counsel was ineffective for failing to investigate her mental health.
- 20 7. The State failed to prove each element of the crimes beyond a reasonable
doubt.
- 21 9. The state district court improperly refused to instruct the jury regarding the
police’s failure to document and collect evidence.
- 22 10. The cumulative effect of the ineffective assistance of counsel claims
deprived her of due process.

23 ECF No. 29.

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1 **II. STANDARD OF REVIEW**

2 The Antiterrorism and Effective Death Penalty Act (AEDPA) sets forth the standard of
3 review generally applicable in habeas corpus cases:

4 An application for a writ of habeas corpus on behalf of a person in custody pursuant
5 to the judgment of a State court shall not be granted with respect to any claim that
6 was adjudicated on the merits in State court proceedings unless the adjudication of
the claim –

7 (1) resulted in a decision that was contrary to, or involved an unreasonable application
8 of, clearly established Federal law, as determined by the Supreme Court of the
United States; or

9 (2) resulted in a decision that was based on an unreasonable determination of the facts
in light of the evidence presented in the State court proceeding.

10 28 U.S.C. § 2254(d). A state court decision is contrary to clearly established Supreme Court
11 precedent under this statute “if the state court applies a rule that contradicts the governing law
12 set forth in [the Supreme Court’s] cases” or “if the state court confronts a set of facts that are
13 materially indistinguishable from a decision of [the Supreme] Court.” *Lockyer v. Andrade*, 538
14 U.S. 63, 73 (2003) (quoting *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000), and citing *Bell v.*
15 *Cone*, 535 U.S. 685, 694 (2002)). A state court decision is an unreasonable application of
16 clearly established Supreme Court precedent under the statute “if the state court identifies the
17 correct governing legal principle from [the Supreme] Court’s decisions but unreasonably
18 applies that principle to the facts of the prisoner’s case.” *Id.* at 75 (quoting *Williams*, 529 U.S.
19 at 413). “The ‘unreasonable application’ clause requires the state court decision to be more
20 than incorrect or erroneous. The state court’s application of clearly established law must be
21 objectively unreasonable.” *Id.* (quoting *Williams*, 529 U.S. at 409-10) (internal citation
22 omitted).

1 The Supreme Court has instructed that “[a] state court’s determination that a claim lacks
2 merit precludes federal habeas relief so long as ‘fairminded jurists could disagree’ on the
3 correctness of the state court’s decision.” *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (citing
4 *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). The Supreme Court has stated “that even a
5 strong case for relief does not mean the state court’s contrary conclusion was unreasonable.” *Id.*
6 at 102 (citing *Lockyer*, 538 U.S. at 75); *see also Cullen v. Pinholster*, 563 U.S. 170, 181 (2011)
7 (describing the standard as a “difficult to meet” and “highly deferential standard for evaluating
8 state-court rulings, which demands that state-court decisions be given the benefit of the doubt”
9 (internal quotations omitted)).

10 **III. DISCUSSION**

11 **A. Ground One**

12 In Ground One, Saintal alleges that her federal constitutional rights were violated because
13 her trial counsel was ineffective for misadvising her about the effect of the State’s notice to seek
14 habitual criminal punishment. ECF No. 29 at 14. Saintal explains that if her trial counsel had
15 told her she was eligible to be sentenced as a habitual criminal, she would have accepted the
16 State’s offer of five to twenty years. *Id.* In her appeal of the denial of her state habeas petition,
17 the Supreme Court of Nevada held:

18 [A]ppellant argues that her trial counsel was ineffective for incorrectly advising her
19 regarding the habitual criminal enhancement, as appellant believes she may have
20 received a lesser sentence through a plea deal had she been advised differently by
21 counsel. While the record regarding the State’s plea offers is not clear, counsel
22 stated at the evidentiary hearing that they believed it was to appellant’s advantage
23 to go to trial as the State had erroneously cited to NRS 207.012 rather than NRS
207.010 in the notice of intent to seek treatment as a habitual criminal and appellant
was not eligible for enhancement under NRS 207.012. Counsel testified that this
strategy was successful until the district court received a decision in a different
criminal case from this court which concluded there was no prejudice from a similar
error in the notice of intent to seek treatment as a habitual criminal. [Footnote 1:
This court held on direct appeal that appellant was not prejudiced by the incorrect

1 initial notice of intent as it provided appellant sufficient notice that the State
2 intended to pursue punishment as a habitual criminal. *Saintal v. State*, Docket No.
49646 (Order of Affirmance, June 30, 2009)].

3 Appellant fails to demonstrate that she was prejudiced. Appellant fails to meet her
4 burden to demonstrate a reasonable probability that the outcome would have been
5 different as she fails to demonstrate that there was a plea offer she would have
6 accepted, that the district court would also have accepted it, and that it would have
been less severe than the actual sentence imposed. *See Lafler v. Cooper*, 566 U.S.
_____, ___, 132 S. Ct. 1376, 1385 (2012). Therefore, the district court did not err in
denying this claim.

7 ECF No. 13-5 at 192-93. This ruling by the Supreme Court of Nevada was not objectively
8 unreasonable.

9 In *Strickland v. Washington*, the Supreme Court of the United States established a two-
10 prong test for analysis of claims of ineffective assistance of counsel, requiring the petitioner to
11 demonstrate (1) that the attorney’s “representation fell below an objective standard of
12 reasonableness,” and (2) that the attorney’s deficient performance prejudiced the defendant such
13 that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of
14 the proceeding would have been different.” 466 U.S. 668, 688, 694 (1984). A court considering
15 a claim of ineffective assistance of counsel must apply a “strong presumption that counsel’s
16 conduct falls within the wide range of reasonable professional assistance.” *Id.* at 689. The
17 petitioner’s burden is to show “that counsel made errors so serious that counsel was not
18 functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* at 687.
19 And, to establish prejudice under *Strickland*, it is not enough for the habeas petitioner “to show
20 that the errors had some conceivable effect on the outcome of the proceeding.” *Id.* at 693.
21 Rather, the errors must be “so serious as to deprive the defendant of a fair trial, a trial whose
22 result is reliable.” *Id.* at 687.

1 Where a state district court previously adjudicated the claim of ineffective assistance of
2 counsel under *Strickland*, establishing that the decision was unreasonable is especially difficult.

3 Establishing that a state court's application of *Strickland* was unreasonable under
4 § 2254(d) is all the more difficult. The standards created by *Strickland* and
5 § 2254(d) are both "highly deferential," [*Strickland*, 466 U.S. at 689]; *Lindh v. Murphy*,
6 521 U.S. 320, 333, n.7, 117 S.Ct. 2059, 138 L.Ed.2d 481 (1997), and when
7 the two apply in tandem, review is "doubly" so, *Knowles v. Mirzayance*, 556 U.S.
8 111, 123 (2009)]. The *Strickland* standard is a general one, so the range of
9 reasonable applications is substantial. 556 U.S., at 123, 129 S.Ct. at 1420. Federal
habeas courts must guard against the danger of equating unreasonableness under
Strickland with unreasonableness under § 2254(d). When § 2254(d) applies, the
question is not whether counsel's actions were reasonable. The question is whether
there is any reasonably argument that counsel satisfied *Strickland*'s deferential
standard.

10 *Harrington*, 562 U.S. at 105; *see also Cheney v. Washington*, 614 F.3d 987, 995 (9th Cir. 2010)
11 ("When a federal court reviews a state court's *Strickland* determination under AEDPA, both
12 AEDPA and *Strickland*'s deferential standards apply; hence, the Supreme Court's description of
13 the standard as 'doubly deferential.'").

14 A defendant's right to counsel "extends to the plea-bargaining process." *Lafler v. Cooper*,
15 566 U.S. 156, 162 (2012). When the ineffective assistance of counsel claim is based "[i]n the
16 context of pleas[,] a defendant must show the outcome of the plea process would have been
17 different with competent advice." *Id.* at 163. In other words, "prejudice can be shown if loss of
18 the plea opportunity led to a trial resulting in a conviction on more serious charges or the
19 imposition of a more severe sentence." *Id.* at 168.

20 The State filed a notice of intent to seek habitual criminal punishment under Nevada
21 Revised Statutes § 207.012. ECF No. 13-1 at 111. At the sentencing hearing, Saintal's trial
22 counsel informed the court that the notice of intent was defective because it cited § 207.012, the
23 habitual felon statute, instead of § 207.010, the habitual criminality statute. ECF No. 13-2 at 67,

1 69. Saintal's trial counsel explained that "since the only offer that was ever made to [his]
2 understanding was to plead to the small habitual," Saintal was advised "all along she's not
3 eligible for the habitual under the standard that was filed," so it was in her best interest to "go to
4 trial." *Id.* at 68-69. The court held that the State failed to give proper notice to seek habitual
5 criminal punishment and imposed Saintal's sentence. *Id.* at 70.

6 Thereafter, the State filed an amended notice of intent to seek habitual criminal
7 punishment under § 207.010 and a motion to reconsider sentencing. ECF No. 13-2 at 75, 79.
8 Saintal's trial counsel opposed the motion, stating that both he and Saintal's initial trial counsel
9 informed Saintal "that even with a conviction, the possible sentences were better than agreeing
10 to the Small Habitual standard, and that she could not be sentenced as a violent habitual felon."
11 ECF No. 13-2 at 88. In the opposition, Saintal's trial counsel also explained that "[f]rom the
12 outset defense counsel has advised her that she was eligible for the habitual treatment, but that by
13 filing under the violent offender statute, the state would not be able to meet its burden of proof."
14 *Id.* at 89. At the hearing on the motion to reconsider sentence, the state district court indicated
15 that following Saintal's original sentencing hearing, the Supreme Court of Nevada issued an
16 order in *George v. State* stating that a typographical error in a notice of intent to seek habitual
17 criminal punishment "doesn't matter." ECF No. 13-2 at 94. The state district court then
18 sentenced Saintal as a habitual criminal. *Id.* at 98.

19 At the post-conviction evidentiary hearing, Saintal testified that her trial counsel
20 "encouraged [her] to go to trial because they said the statute was wrong and there was no way
21 that [she] could be found a violent, habitual criminal. So they pushed the issue of trial. And
22 [she] went to trial." ECF No. 14-6 at 47, 54. Saintal was advised that she was not eligible for
23 habitual criminal punishment the way it was pleaded by the State and that she should not take

1 any plea bargains due to the incorrect pleading. *Id.* at 54-55. Saintal’s trial counsel testified
2 during the post-conviction evidentiary hearing that the defense team knew that Saintal was
3 eligible for habitual criminal treatment “from the beginning of the case” and that they also knew
4 that the notice of intent was defective “early in the case.” ECF No. 14-6 at 33, 38.

5 It is clear that Saintal’s trial counsel informed her that she was ineligible to be sentenced
6 as a habitual criminal under Nev. Rev. Stat. § 207.012. It is unclear, however, whether Saintal’s
7 trial counsel also informed her that there was a possibility that the state district court could
8 determine that she had adequate notice of the intent to seek habitual criminal punishment under
9 § 207.010 regardless of the citation to the incorrect statute. Nonetheless, I decline to address
10 Saintal’s trial counsel’s alleged deficiency in this regard because the Supreme Court of Nevada
11 reasonably denied Saintal’s claim on the basis that Saintal failed to demonstrate prejudice. *See*
12 *Strickland*, 466 U.S. at 697 (explaining that a court may first consider either the question of
13 deficient performance or the question of prejudice; if the petitioner fails to satisfy one element of
14 the claim, the court need not consider the other).

15 Saintal’s trial counsel, who was not “the first attorney on [Saintal’s] case,” ECF No. 14-6
16 at 6, stated during Saintal’s original sentencing hearing that “the only offer that was ever made to
17 [his] understanding was to plead to the small habitual.” ECF No. 13-2 at 68-69. But Saintal
18 testified at the post-conviction evidentiary hearing that she “[d]id [not] know that the offer on the
19 case prior to even the first trial was a stipulate to small habitual.” ECF No. 14-6 at 62. The State
20 responded that “there may not have been an offer conveyed.” *Id.* These facts demonstrate that
21 the Supreme Court of Nevada reasonably noted that the record regarding the State’s plea offer is
22 unclear. Without clear evidence that a plea offer was made, the Supreme Court of Nevada
23 reasonably concluded that Saintal failed to demonstrate a reasonable probability that the outcome

1 would have been different because she failed to demonstrate that there was a plea offer that she
2 would have accepted. *Lafler*, 566 U.S. at 163; *Strickland*, 466 U.S. at 694. Therefore, I deny
3 Saintal federal habeas relief for Ground One.

4 **B. Ground Two**

5 In Ground Two, Saintal argues that her federal constitutional rights were violated when
6 the state district court improperly sentenced her as a habitual criminal. ECF No. 29 at 18. She
7 explains that the State's corrected notice of intent to seek habitual criminal punishment provided
8 inadequate, untimely notice. *Id.* at 18-19. She also contends that sentencing her as a habitual
9 criminal based on an unpublished Supreme Court of Nevada decision decided after her trial and
10 sentencing violated due process. *Id.* at 20.

11 In Saintal's appeal of her judgment of conviction, the Supreme Court of Nevada held:

12 Saintal argues that the district court violated her right to due process when it
13 sentenced her as a habitual criminal. Specifically, Saintal contends that she was
not provided with 15 days' notice, as required by NRS 207.016(2). We disagree.

14 "Generally, the failure to . . . object on the record precludes appellate review." *Grey*
15 *v. State*, 124 Nev. ___, ___, 178 P.3d 154, 163 (2008). "However, 'this court has
16 the discretion to address an error if it was plain and affected the defendant's
substantial rights.'" *Id.* (quoting *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95
17 (2003)). It is within the district court's discretion whether to sentence a defendant
18 as a habitual criminal pursuant to NRS 207.010. *See* NRS 207.010(2). The State
must provide notice of its intent to pursue punishment as a habitual criminal. *Id.* If
notice is filed after the defendant is convicted, then sentencing cannot occur for 15
days. NRS 207.016(2).

19 Here, before trial, the State filed a notice of intent to seek punishment as a habitual
20 criminal pursuant to NRS 207.012. The notice listed five prior felonies for which
Saintal had been convicted. On May 3, 2007, Saintal's sentencing hearing was
21 held. At the hearing, the district court found that Saintal's prior convictions did not
qualify her for sentencing as a habitual criminal pursuant to NRS 207.012.
22 Therefore, the district court sentenced Saintal to 48 to 120 months for burglary, 48
to 120 months for grand larceny to run consecutively to the first count, and 12
23 months for conspiracy to possess stolen property to run concurrently to the first two
counts.

1 On May 4, 2007, the State filed a corrected notice of intent to seek punishment as
2 a habitual criminal pursuant to NRS 207.010. On May 11, 2007, the State moved
3 the district court to reconsider Sainital's sentencing, arguing that it had mistakenly
4 cited NRS 207.012 in the original notice of intent, instead of NRS 207.010. On
5 May 15, 2007, the district court granted the State's motion. The district court stated
6 that, based on this court's decision in the unpublished order of *George v. State*,
7 Docket No. 44338 (Order Affirming in Part, Reversing in Part and Remanding,
8 May 9, 2009), Sainital had been put on notice of the State's intent to seek
9 punishment as a habitual criminal when it filed the original notice before trial
10 began. [Footnote 3: Sainital contends that her right to due process was violated
because the district court relied on an unpublished order. We disagree. The *George*
order did not create new law, but rather explained how the habitual criminal statutes
functioned. Therefore, the district court did not violate Sainital's rights by
referencing an order that it used to comprehend the applicable statutes.] Further,
that the State had cited the incorrect statute did not diminish the effect of the notice.
Therefore, the district court determined that it had jurisdiction to sentence Sainital
as a habitual criminal and sentenced her to 10 years to life for burglary, 10 years to
life for grand larceny, and 12 months for conspiracy to possess stolen property, all
to run concurrently.

11 We conclude that although 15 days did not pass between when the State filed its
12 corrected notice of intent, and when the district court sentenced Sainital as a habitual
13 criminal, reversible error did not occur. Sainital failed to object during the
14 sentencing hearing that she had not benefited from the 15 day notice period
15 provided for in NRS 207.016. Therefore, she did not properly preserve the issue
16 on appeal. Moreover, Sainital was not prejudiced by the district court sentencing
17 her as a habitual criminal when only 11 days had passed since the State filed its
corrected notice of intent. As did the district court, we conclude that Sainital was
put on notice of the State's intent to pursue punishment as a habitual criminal when
it filed the original notice of intent. Although the State included the incorrect statute
in the notice, that does not lessen its effect. Additionally, Sainital has not argued,
either on appeal or below, that the full 15-day notice period was necessary for her
to prepare her defense against being sentenced as a habitual criminal.

18 Therefore, we conclude that Sainital was not prejudiced by her sentence as a habitual
19 criminal and, therefore, plain error did not occur. To hold otherwise would be to
20 elevate form over substance. *See, e.g., Fiegehen v. State*, 121 Nev. 293, 302, 113
P.3d 305, 310 (2005).

21 ECF No. 13-2 at 240-243. This ruling by the Supreme Court of Nevada was reasonable.

22 Nevada Revised Statutes §207.016(2) provided that "[a] count pursuant to NRS
23 207.010, 207.012 or 207.014 may be separately filed after conviction of the primary offense, but

1 if it is so filed, sentence must not be imposed, or the hearing required by subsection 3 held, until
2 15 days after the separate filing.” Although only 11 days passed between the State’s filing of the
3 amended notice and Saintal’s sentencing, the Supreme Court of Nevada reasonably concluded
4 that Saintal was not prejudiced.

5 Due process requires that a defendant be given notice of the intent to seek habitual
6 criminal punishment. *Oyler v. Boles*, 368 U.S. 448, 452 (1962). Here, as the Supreme Court of
7 Nevada reasonably noted, Saintal was put on notice of the State’s intent to seek habitual criminal
8 punishment on January 24, 2007, when the original notice was filed. Although the original
9 notice cited to the incorrect statute, Saintal was nonetheless effectively put on notice at that time
10 that the State was seeking habitual criminal punishment.

11 Saintal next argues that her sentence violated due process because she was sentenced as a
12 habitual criminal based on an unpublished Supreme Court of Nevada decision (*George v. State*)
13 issued after her original sentencing. The Supreme Court of Nevada reasonably concluded that
14 this argument lacked merit. That court noted that the *George* order simply explained the
15 functioning of the habitual criminal statutes and did not create new law. *See* ECF No. 32-4 at 4-
16 5. Accordingly, Saintal was not sentenced based on *George*; rather, the state district court
17 merely used *George* to understand the habitual criminal statutes at issue.

18 Saintal appears to argue that § 207.016(2) is ambiguous and, as such, the rule of lenity
19 demands that ambiguities be construed in her favor. ECF No. 29 at 20. The state district court
20 originally believed that notice was inadequate based on the citation to the incorrect statute in the
21 notice of intent to seek habitual criminal punishment. But after reading *George*, the state district
22 court was in a better position to “comprehend the applicable statutes,” as the Supreme Court of
23 Nevada noted. ECF No. 13-2 at 242 n.3. Therefore, any ambiguity about what happens when a

1 notice of intent to seek habitual criminal punishment cites § 207.012 instead of § 207.010 has
2 been resolved by the Supreme Court of Nevada through its explanation of the functioning of the
3 habitual criminal statutes. Because “it is not the province of a federal habeas court to reexamine
4 state-court determinations on state-law questions,” *Estelle v. McGuire*, 502 U.S. 62, 67-68
5 (1991), Saintal’s ambiguity argument lacks merit. I deny Saintal federal habeas corpus relief for
6 Ground Two.

7 **C. Ground Four²**

8 In Ground Four, Saintal alleges that the two life sentences she received for stealing a
9 purse and wallet violated her federal constitutional right prohibiting cruel and unusual
10 punishment. ECF No. 29 at 24. In Saintal’s appeal of her judgment of conviction, the Supreme
11 Court of Nevada held that her argument that “two life sentences for one incident is cruel and
12 unusual punishment when she has only been to jail once before” lacked merit. ECF No. 13-2 at
13 240 n.10. As this ground was denied on the merits by the Supreme Court of Nevada without
14 analysis, the question here is whether Saintal has shown that there was no reasonable basis for
15 that denial. *See Harrington*, 562 U.S. at 98.

16 The Eighth Amendment provides that “cruel and unusual punishments [shall not be]
17 inflicted.” U.S. Const. amend. VIII. “[B]arbaric punishments” and “sentences that are
18 disproportionate to the crime” are cruel and unusual punishments. *Solem v. Helm*, 463 U.S. 277,
19 284 (1983) (concluding that a habitual offender’s sentence for a seventh nonviolent felony for
20 life without the possibility of parole is disproportionate). The Eighth Amendment does not,
21 however, mandate strict proportionality between the defendant’s sentence and the crime. *See*
22

23 ² Because Ground Three involves a discussion of the evidence presented at the trial, it is
discussed following Ground Seven, Saintal’s claim that there was insufficient evidence to
support her convictions.

1 *Ewing v. California*, 538 U.S. 11, 23 (2003). Rather, “only extreme sentences that are ‘grossly
2 disproportionate’ to the crime” are forbidden. *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991).
3 “In assessing the compliance of a non-capital sentence with the proportionality principle, [the
4 Court] consider[s] ‘objective factors’” such as “the severity of the penalty imposed and the
5 gravity of the offense.” *Taylor v. Lewis*, 460 F.3d 1093, 1098 (9th Cir. 2006). “[S]uccessful
6 challenges based on proportionality are ‘exceedingly rare,’ and deference is due legislative
7 judgments on such matters.” *Id.* (citing *Solem*, 463 U.S. at 289-90).

8 Saintal was adjudged guilty under Nevada’s “Large Habitual Criminal Statute,” Nevada
9 Revised Statutes § 207.010(1)(b). ECF No. 13-2 at 104. At the time of Saintal’s sentencing, that
10 statute provided that a habitual criminal is “a person convicted in this state of . . . [a]ny felony,
11 who has previously been three times convicted . . . of any crime which under the laws of the situs
12 of the crime or of this state would amount to a felony.” The statute further provided that a
13 person found to be a large habitual criminal “shall be punished for a category A felony by
14 imprisonment in the state prison” for life without the possibility of parole, life with the
15 possibility of parole after ten years, or a definite term of 25 years with parole eligibility after ten
16 years. Nev. Rev. Stat. § 207.010(1)(b)(1)-(3). Saintal was sentenced to life with parole eligibility
17 after ten years for the burglary conviction and life with parole eligibility after ten years for the
18 grand larceny conviction. ECF No. 13-2 at 104. The state district court ordered these sentences to
19 be served concurrently. *Id.*

20 Although Saintal received the second harshest punishment allowed by § 207.010(1)(b), I
21 cannot conclude that her sentence was “‘grossly disproportionate’ to the crime.” *Harmelin*, 501
22 U.S. at 1001. The sentencing judge stated that “nobody deserves to be in prison for life more
23 than [Saintal]. [Saintal] steal[s] every single day, [she has] been doing it for decades, and [she]

1 will be stealing the week [she] get[s] out of prison.” ECF No. 13-2 at 98. Saintal’s presentence
2 investigation report provided that from June 20, 1985 to March 16, 2007, Saintal had five felony
3 convictions, three gross misdemeanor convictions, and fourteen misdemeanor convictions. ECF
4 No. 34 at 5. Her felony convictions included attempted grand larceny, possession of a credit
5 card without the cardholder’s consent (twice), attempted forgery, and forgery. *Id.* at 5-8. Her
6 gross misdemeanor convictions included conspiracy to commit grand larceny (twice) and
7 conspiracy to commit burglary. *Id.* Saintal had been in prison four times and in jail thirteen
8 times as of March 16, 2007. *Id.* at 5.

9 Although Saintal’s sentence of life with the possibility of parole after ten years may
10 appear disproportionate to the crimes of stealing a purse and a wallet, her sentence is based on
11 the fact that she was adjudged to be a habitual criminal with at least three prior felonies. Nev.
12 Rev. Stat. § 207.010(1)(b); *see Solem*, 463 U.S. at 297 (“[A] State is justified in punishing a
13 recidivist more severely than it punishes a first offender.”). Saintal’s extensive criminal record
14 demonstrates that the aggregate gravity of her offenses was severe, such that her sentences do not
15 violate the Eight Amendment. *Taylor*, 460 F.3d at 1098; *cf. Ramirez v. Castro*, 365 F.3d 755,
16 756-57 (9th Cir. 2004) (finding a sentence of 25 years to life was grossly disproportionate to
17 three shoplifting offenses). It is worth noting that Saintal is eligible for parole after serving ten
18 years. *See Rummel v. Estelle*, 445 U.S. 263, (1980) (“[B]ecause parole is ‘an established
19 variation on imprisonment of convicted criminals,’ . . . a proper assessment of [a state’s]
20 treatment of [a habeas petitioner] could hardly ignore the possibility that he will not actually be
21 imprisoned for the rest of his life.”). Saintal has not shown that there was no reasonable basis for
22 the Supreme Court of Nevada’s ruling that her claim lacked merit. *See Harrington*, 562 U.S. at
23 98. I deny Saintal federal habeas relief for Ground Four.

1 **D. Ground Five**

2 In Ground Five, Saintal alleges that her federal constitutional rights were violated when
3 her trial counsel failed to investigate and present mitigating evidence of her mental health issues
4 at sentencing. ECF No. 29 at 27; ECF No. 59 at 13. The respondents argue that Saintal’s mental
5 health issues were not explored in the evidentiary hearing, so this claim lacks evidentiary
6 support. ECF No. 54 at 11. In Saintal’s state habeas appeal, the Supreme Court of Nevada held:

7 [A]ppellant argues that her trial counsel was ineffective for failing to investigate
8 appellant’s mental health to determine her competency and for mitigation purposes
9 at the sentencing hearing. Appellant asserts she took medication and was shaking
10 during trial, which she alleges indicated that she had a mental hardship. Appellant
11 fails to demonstrate her trial counsel’s performance was deficient or that she was
12 prejudiced. Counsel testified at the evidentiary hearing that they had no concerns
13 regarding appellant’s mental health and that she was very active in aiding in her
14 defense. That appellant used medication and shook during trial is insufficient to
15 demonstrate that she did not have the ability to consult with her attorney with a
16 reasonable degree of rational understanding and that she did not have a factual
17 understanding of the proceedings against her. *See Melchor-Gloria v. State*, 99 Nev.
18 174, 179-80, 660 P.2d 109, 113 (1983) (citing *Dusky v. United States*, 362 U.S.
19 402, 402 (1960)). Appellant fails to demonstrate a reasonable probability of a
20 different outcome at trial or at the sentencing hearing had further investigation of
21 her mental health or mitigation evidence been performed as appellant fails to
22 demonstrate what further investigation would have uncovered. *See Molina*, 120
23 Nev. at 192, 87 P.3d at 538. Therefore, the district court did not err in denying this
claim.

ECF No. 13-5 at 191-92. This rejection of Saintal’s claim was neither contrary to nor an
unreasonable application of clearly established federal law.

 Saintal’s trial counsel testified at the post-conviction evidentiary hearing that “Saintal
never directly raised [her] mental [health history] until after the trial.” ECF No. 14-6 at 5, 11. At
that point, before sentencing, they “talked in some depth about the loss of her family member
and some of her issues.” *Id.* at 11. Saintal informed her trial counsel that her son had passed
away. *Id.* When Saintal’s trial counsel inquired about her mental health issues, her response

1 dealt with “stress and things of that nature.” *Id.* at 15. Although he did not present any
2 mitigating evidence in the form of Saintal’s mental health issues at sentencing, Saintal’s trial
3 counsel explained at the post-conviction evidentiary hearing that “[i]f prior to the time of
4 sentencing the client has represented” a mental health history or a psychological history,
5 investigating those issues can be helpful if there is “time to do it.” *Id.* at 11-12.

6 Saintal testified at the post-conviction evidentiary hearing that she discussed her mental
7 health history with her trial counsel “[a]t the beginning of the trial.” *Id.* at 50. Saintal explained
8 that she physically shook during the trial, and she told her trial counsel that she was on
9 medication at the time and it made her shake. *Id.* at 50. Saintal gave her trial counsel her
10 therapist’s information so her therapist could explain the mediation and its effect on her. *Id.*

11 Counsel’s performance at the penalty phase is measured against “prevailing professional
12 norms.” *Strickland*, 466 U.S. at 688. I “must avoid the temptation to second-guess [counsel’s]
13 performance or to indulge ‘the distorting effects of hindsight.’” *Mayfield v. Woodford*, 270 F.3d
14 915, 927 (9th Cir. 2001) (citing *Strickland*, 466 U.S. at 689). When challenging counsel’s
15 actions in failing to present mitigating evidence during a sentencing hearing, the “principal
16 concern . . . is not whether counsel should have presented a mitigation case[, but instead] . . .
17 whether the investigation supporting counsel’s decision not to introduce mitigating evidence . . .
18 was itself reasonable.” *Wiggins v. Smith*, 539 U.S. 510, 522-23 (2003) (emphasis in original).

19 The Supreme Court of Nevada reasonably concluded that Saintal failed to demonstrate
20 prejudice. Her trial counsel was aware that Saintal shook due to her medication, was
21 experiencing stress, and lost her son. However, as the Supreme Court of Nevada reasonably
22 concluded, Saintal failed to demonstrate during her state habeas proceedings what further
23 information would have been uncovered had an investigation been conducted with this

1 information.³ Furthermore, Saintal’s second trial counsel testified at the post-conviction
2 evidentiary hearing that he did not “think what [he] said to Judge Bell mattered oftentimes in
3 terms of how he was going to sentence, so he had his mind made up frequently before anyone
4 walked into the courtroom about what he was going to do with an individual’s life.” ECF No. 14-
5 6 at 46. Accordingly, even if Saintal’s trial counsel had uncovered information concerning
6 Saintal’s mental health issues that he could have presented at the sentencing hearing, Saintal fails
7 to demonstrate that the result of her sentencing would have been different. *Strickland*, 466 U.S.
8 at 694; *see also Djerf v. Ryan*, 931 F.3d 870, 881 (9th Cir. 2019) (“*Strickland* prejudice is not
9 established by mere speculation.”). I deny Saintal habeas corpus relief for Ground Five.

10 **E. Ground Seven**

11 In Ground Seven, Saintal alleges that her federal constitutional rights were violated
12 because there was insufficient evidence to support her convictions. ECF No. 29 at 31.
13 Specifically, Saintal contends that the State failed to prove both that the value of the stolen items
14 was more than \$250.00 and that she had the intent to commit grand larceny when she entered the
15 store. *Id.* at 32. In Saintal’s appeal of her conviction, the Supreme Court of Nevada held:

16 Saintal argues that the State failed to present sufficient evidence to prove that she
17 committed grand larceny or burglary.

18
19 ³ Saintal explains that she was diagnosed with bipolar disorder, suffered from major
20 depressive episodes, experienced a rough childhood due to her father’s alcoholism and her
21 mother’s abuse, and was hospitalized because she was suicidal. ECF No. 29 at 27-28. But the
22 medical records Saintal cites to in support of these issues were not presented previously. *See*
23 ECF No. 31-12; ECF No. 31-13. These medical records were transmitted to the Federal Public
Defender in 2015 whereas the Supreme Court of Nevada affirmed the denial of Saintal’s state
habeas petition in 2013. *See id.*; ECF No. 13-5 at 190. I am restricted from considering evidence
that was not a part of the record reviewed by the Supreme Court of Nevada. *Cullen v. Pinholster*,
563 U.S. 170, 181 (2011) (“[R]eview under § 2254(d)(1) is limited to the record that was before
the state court that adjudicated the claim on the merits.”). Thus, I decline to consider these
medical records.

1 In reviewing whether there is sufficient evidence to support a jury's verdict, this
2 court determines "“whether, after viewing the evidence in the light most favorable
3 to the prosecution, any rational trier of fact could have found the essential elements
4 of the crime beyond a reasonable doubt.”” *Mejia v. State*, 122 Nev. 487, 492, 134
5 P.3d 722, 725 (2006) (quoting *Koza v. State*, 100 Nev. 245, 250, 681 P.2d 44, 47
6 (1984) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))). Where there is
7 substantial evidence supporting the jury's verdict, it will not be overturned on
8 appeal. *Hern v. State*, 97 Nev. 529, 531, 635 P.2d 278, 279 (1981). Substantial
9 evidence is “evidence that ‘a reasonable mind might accept as adequate to support
10 a conclusion.’” *Brust v. State*, 108 Nev. 872, 874-75, 839 P.2d 1300, 1301 (1992)
11 (quoting *First Interstate Bank v. Jafbro's Auto Body*, 106 Nev. 54, 56, 787 P.2d 765,
12 767 (1990) (*abrogated on other grounds by Countrywide Home Loans v.*
13 *Thitchener*, 124 Nev. ___, ___, 192 P.3d 243, 255 (2008))).

8 *Grand Larceny*

9 Sainital argues that the State failed to prove that the Coach purse and wallet had a
10 combined value of more than \$250. Sainital asserts that the true value of an item
11 purchased at a Coach factory outlet cannot be determined unless it is scanned by
12 the computer. Sainital argues that it is necessary to scan the price tag to determine
13 if the item is being sold as marked, or for a lower promotional price. Because
14 neither item was ever scanned, Sainital contends that the State could not prove the
15 true value.

16 To prove that an accused is guilty of committing grand larceny, the State must
17 demonstrate that she stole property valued at \$250 or more. NRS 205.220(1)(c).
18 An item's price tag is competent evidence of its value for the purpose of proving
19 value to establish grand larceny. *Calbert v. State*, 99 Nev. 759, 759-60, 670 P.2d
20 576, 576 (1983). While Sainital attempts to distinguish her case from *Calbert* by
21 noting that the price tags in *Calbert* were found on the items, whereas the price tags
22 in the instant case were found either on the ground near Sainital's car or in her
23 husband's hands, we conclude that this argument fails. As in *Calbert*, the price tags
were competent evidence of the value of the merchandise because they matched the
items stolen. Thus, viewed in the light most favorable to the State, we conclude
that the price tags presented by the State provided sufficient evidence for a jury to
reasonably conclude that Sainital was guilty of committing grand larceny.

19 *Burglary*

20 Next, Sainital contends that the State failed to prove that she was guilty of burglary
21 because it did not present evidence that she entered the Coach store with the intent
22 to commit larceny of a felony within.

23 Pursuant to NRS 205.060, the State in this case had to prove that Sainital entered
the Coach store with the intent to commit grand or petit larceny within. We
conclude that the State met its burden. Sainital appeared as if she did not want to

1 be bothered while at the store, left the store without the two wristlets that she
2 legitimately purchased, and she and her husband were found with two stolen items.
3 Therefore, by viewing the evidence in the light most favorable to the State, we
conclude that a reasonable juror could conclude that Saintal entered the Coach store
with the intent to commit larceny.

4 ECF No. 13-2 at 238-240. This ruling was reasonable.

5 “[T]he Due Process Clause protects the accused against conviction except upon proof
6 beyond a reasonable doubt of every fact necessary to constitute the crime with which he is
7 charged.” *In re Winship*, 397 U.S. 358, 364 (1970). A federal habeas petitioner “faces a heavy
8 burden when challenging the sufficiency of the evidence used to obtain a state conviction on
9 federal due process grounds.” *Juan H. v. Allen*, 408 F.3d 1262, 1274 (9th Cir. 2005). On direct
10 review of a sufficiency of the evidence claim, a state court must determine whether “any rational
11 trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”
12 *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The evidence is to be viewed “in the light most
13 favorable to the prosecution.” *See id.* Federal habeas relief is available only if the state-court
14 determination that the evidence was sufficient to support a conviction was an “objectively
15 unreasonable” application of *Jackson*. *See Juan H.*, 408 F.3d at 1275 n.13.

16 Nyckie Xaysengsouk, an employee of the Coach Factory Outlet store, testified that
17 Saintal came into the store about 20 minutes after it opened on March 28, 2006, wearing
18 tracksuit pants. ECF No. 14-2 at 86-89. Xaysengsouk asked Saintal “if she was doing okay, and
19 [Saintal] said she was fine [and] didn’t seem like she wanted to be bothered.” *Id.* at 89. A little
20 while later, Xaysengsouk observed Saintal “trying to stuff . . . something in” her pants, “fixing
21 the strap [of a purse called a swingpack] that was hanging out from [the waist area of] her pants,”
22 and then “shaking her leg, trying to make that bag fall.” *Id.* at 90. Xaysengsouk testified that one
23 of the “swingpack” purses was missing from the display and there were no other customers in

1 that area. *Id.* at 91-92. Similarly, Franklin Hironobu, another employee of the store, testified that
2 he observed Saintal place a wallet from one of the trays in the store into her own purse. ECF No.
3 14-2 at 124, 128. Xaysengsouk testified that Saintal then purchased two wristlets, which were
4 “de-sensored.” *Id.* at 93.

5 Rebecca Cortese, the manager at the store, testified that she “was told by [her] employees
6 to come to the floor because there was a theft in progress.” ECF No. 14-2 at 147-148. When
7 Saintal exited the store the “Sensormatic beeped.” *Id.* at 149. Cortese requested Saintal’s
8 purchased items “so [she] could scan it to see if that’s what” had set off the alarm. *Id.* Saintal
9 complied, but Saintal’s previously purchased items did not set off the alarm. *Id.* at 151. Cortese
10 then asked for Saintal’s purse so she could see if there was something in it that was setting off
11 the alarm; however, Saintal refused. *Id.* at 152. Saintal then “took off walking out to the parking
12 lot.” *Id.* at 153. Cortese “started following at a distance behind her, just letting her know,
13 ma’am, you know, I have your purchase, and she just kept walking, she would not turn around.”
14 *Id.*

15 Security arrived in the parking lot, and Saintal got into her vehicle. *Id.* at 154. Cortese,
16 who was standing behind Saintal’s vehicle, could see Saintal in the driver’s seat of the vehicle
17 moving things around. *Id.* at 154-55. The police arrived and Saintal eventually got out of her
18 vehicle and agreed “to walk back to the store to walk through the Sensormatic.” *Id.* at 155. When
19 Saintal returned to the store and walked through the sensor, it did not alert, although Saintal did
20 not have her own purse with her at this time. *Id.* at 156.

21 Las Vegas Metropolitan Police Officer Steven Perry testified that he was called to the
22 store “for a petty larceny call” on March 28, 2006. ECF No. 14-2 at 205-06. Following Saintal’s
23 return to the store and successful reexamination by the store’s sensor, Saintal stated that Officer

1 Perry “could look at [her] vehicle.” *Id.* at 209. As they were walking back to Saintal’s vehicle,
2 Officer Perry “could see somebody at [Saintal’s] vehicle with the car door open. It was a black
3 male. He had his torso halfway inside the car.” *Id.* When Officer Perry asked Saintal if the
4 individual was her husband, she said “she didn’t know if that was her husband.” *Id.* at 225.

5 Officer Perry later learned that the individual, Willie Smith, was Saintal’s husband. *Id.* at 210.

6 When Officer Perry approached the vehicle, Smith “start[ed] walking westbound in the
7 parking lot” with Coach packaging materials and Coach price tags in his hands. *Id.* at 210-11.

8 Officer Perry conducted a search of Smith’s vehicle and found a suitcase and duffle bag in the
9 trunk with “what seemed to be new clothing” with manufacturer tags. *Id.* at 216. He also found

10 three Coach bags and “two carry-on type bags” full of new clothes in the passenger portion of

11 the vehicle. *Id.* at 217, 228. Officer Perry located the “swingpack” purse “on the driver’s side

12 rear floorboard” of Smith’s vehicle. *Id.* at 218. Following a search of Saintal’s vehicle, Officer

13 Perry found the Coach wallet in the glovebox. *Id.* at 213. The wallet had nothing but a Colorado

14 identification card for Belinda Howard in it. *Id.* at 214. Saintal stated that “[i]t was her sister’s

15 wallet.” *Id.* at 214. Belinda Howard testified at the trial that she did not know Saintal and she

16 had not seen her Colorado identification card for four or five years. ECF No. 14-2 at 244-246.

17 With regard to Coach’s pricing of its merchandise, Xaysengsouk testified that “a lot of

18 stuff goes on sale.” *Id.* at 104. Xaysengsouk explained that every price tag has two printed

19 prices: the manufacturer’s suggested retail price and the factory price. *Id.* at 108. Merchandise

20 will be discounted from the lesser factory price if it goes on promotion, which would not be

21 reflected on the price tag. *Id.* at 109. Xaysengsouk testified that “only the computer knows from

22 day to day . . . what that price would be.” *Id.* at 112. Xaysengsouk was never asked to check the

23 price tags at issue by scanning them with the computer. *Id.* at 113.

1 Cortese testified that the factory price listed on the wallet price tag was \$149.00. *Id.* at
2 162-63; *see also* ECF No. 32-2 at 5 (price tag of the signature clutch wallet showing that the
3 factory price was \$149.00); ECF No. 14-2 at 119 (testimony of Xaysengsouk that she believed
4 the wallet was \$149.00). The wallet was being offered at 20 percent off, so it cost \$119.20. ECF
5 No. 14-2 at 164-65. The purse “at that time was a new seasonable item” and “would not have
6 any additional promotion on top of” the factory price. *Id.* at 165. The factory price of the purse
7 was \$139.00. *Id.*; *see also* ECF No. 32-2 at 3 (price tag of the swingpack purse showing that the
8 factory price was \$139.00); ECF No. 14-2 at 118 (testimony of Xaysengsouk that she believed
9 the purse was \$139.00). Therefore, the combined price of the wallet and the purse was \$258.20.
10 ECF No. 14-2 at 165.

11 The jury found Saintal guilty of grand larceny, burglary, possession of stolen property
12 with a value less than \$250.00, and conspiracy to possess stolen property. ECF No. 13-2 at 41-
13 42. The count of possession of stolen property was later dismissed. *See* ECF No. 13-2 at 104.
14 Saintal disputes the sufficiency of the evidence related to her grand larceny and burglary
15 convictions. *See* ECF No. 29 at 31-35.

16 **1. Grand larceny**

17 At the time of her conviction, Nevada Revised Statute § 205.220(1)(a) provided that “a
18 person commits grand larceny if the person . . . [i]ntentionally steals, takes and carries away,
19 leads away or drives away . . . [p]ersonal goods or property, with a value of \$250 or more owned
20 by another person.” The Supreme Court of Nevada reasonable concluded that there was
21 sufficient evidence to convict Saintal of grand larceny.

22 The evidence described above is sufficient proof that Saintal stole personal goods owned
23 by someone else. Nev. Rev. Stat. § 205.220(1)(a). The remaining issue is the value of the stolen

1 merchandise. Saintal's defense at trial, and her argument in this petition, is that the State was
2 required to scan the price tags at the register to confirm the price of the purse and wallet. ECF
3 Nos. 29 at 34 and ECF No. 14-2 at 247, 250, 255 (defense witness Robert Maddox, an
4 investigator for the Clark County Public Defender's Officer, testified that he purchased a Coach
5 Signature wristlet, and when it was rung up, there was "[e]vidently . . . a ten percent or twenty
6 percent *unpublished* discount" (emphasis added)). Xaysengsouk testified that the price tag on
7 the merchandise will not reflect whether an item has been discounted due to a promotional sale.
8 ECF No. 14-2 at 109. Store manager Cortese testified that the "swingpack" purse, which had a
9 factory price of \$139.00, "was a new seasonable item" and "would not have any additional
10 promotion on top of" the factory price. *Id.* at 165. The wallet, which had a factory price of
11 \$149.00, was 20 percent off, meaning its value was \$119.20. *Id.* at 162-65. Thus, the aggregate
12 value of the stolen merchandise was \$258.20. And, the Supreme Court of Nevada reasonably
13 concluded that Nevada law allows an item's price tag to establish the value of property for grand
14 larceny purposes. *See Calbert v. State*, 99 Nev. 759, 759-60, 670 P.2d 576, 576 (1983) ("The
15 price tags . . . were competent evidence of the value of the stolen goods for purposes of
16 establishing grand larceny."); *Jackson*, 443 U.S. at 324 n.16 (explaining that sufficiency of the
17 evidence claims are judged by the elements defined by state law). Accordingly, a rational
18 factfinder viewing the evidence in the light most favorable to the prosecution could have found
19 beyond a reasonable doubt that Saintal stole personal goods valued in excess of \$250.00. *See In*
20 *re Winship*, 397 U.S. at 364.

21 **2. Burglary**

22 At the time of her conviction, Nevada Revised Statutes § 205.060(1) provided that "[a]
23 person who, by day or night, enters any . . . store . . . with the intent to commit grand or petit

1 larceny . . . or any felony . . . is guilty of burglary.” The Supreme Court of Nevada reasonably
2 concluded that there was sufficient evidence to convict Saintal of burglary.

3 The evidence demonstrates that Saintal entered the Coach Factory Outlet store and stole a
4 wallet and a purse. Saintal argues that there was insufficient evidence showing her intent. The
5 State presented evidence that Saintal was wearing loose-fitting clothing, that she did not want to
6 be bothered when approached by the sales associate, that she left her legitimately-purchased
7 items with the store manager after the security alarm alerted, that she and Smith drove two
8 vehicles to the shopping center, that Smith was apparently waiting nearby to assist Saintal in the
9 concealment of the stolen merchandise, and that Smith had several bags containing new clothing
10 with manufacturer tags still attached in his vehicle. ECF No. 14-2 at 89, 210-11, 216-218. This
11 circumstantial evidence demonstrates that Saintal had “the intent to commit grand or petit
12 larceny.” Nev. Rev. Stat. § 205.060(1); *see also Grant v. State*, 117 Nev. 427, 435, 24 P.3d 761,
13 766 (2001) (“Intent need not be proved by direct evidence but can be inferred from conduct and
14 circumstantial evidence.”). Thus, the Supreme Court of Nevada reasonably concluded that the
15 State met its burden of proving Saintal’s intent, such that a rational factfinder viewing the
16 evidence in the light most favorable to the prosecution could have found, beyond a reasonable
17 doubt, that Saintal committed burglary. *See In re Winship*, 397 U.S. at 364. I deny Saintal
18 federal habeas relief for Ground Seven.

19 **F. Ground Three**

20 In Ground Three, Saintal alleges that her federal constitutional rights were violated
21 because the jury’s verdicts were inconsistent. ECF No. 29 at 21. She explains that the jury found
22 that she stole items worth more than \$250.00 but possessed items worth less than \$250.00. *Id.* In
23 the appeal of Saintal’s conviction, the Supreme Court of Nevada held:

1 Saintal argues that the district court abused its discretion when it denied her motion
2 for a new trial. Saintal based the motion on her contention that the jury returned
3 inconsistent verdicts because it found both that she was guilty of committing grand
4 larceny, meaning the stolen items were worth more than \$250, and that she was
5 guilty of possessing stolen property valued at less than \$250. Saintal contends that,
6 in denying the motion, the district court violated her due process and Sixth
7 Amendment rights because the jury should have been asked to resolve the apparent
8 discrepancy.

9 This court reviews a district court's denial of a motion for a new trial for an abuse
10 of discretion. *Nelson v. Heer*, 123 Nev. 217, 223, 163 P.3d 420, 424-25 (2007).
11 Verdicts are inconsistent if the jury finds that the defendant is guilty of two offenses
12 that are mutually exclusive. *See Braunstein v. State*, 118 Nev. 68, 78, 40 P.3d 413,
13 420 (2002).

14 Here, we conclude that the district court did not abuse its discretion when it denied
15 Saintal's motion for a new trial. We agree with the district court's determination
16 that the verdicts were consistent. First, it was reasonable for the jury to conclude
17 that Saintal was guilty of grand larceny for stealing the Coach wallet and the Coach
18 purse, which together were worth more than \$250. Second, it was also logical for
19 the jury to find that Saintal was guilty of possessing stolen property valued at less
20 than \$250 because she was caught with only the wallet, which was worth less than
21 \$250, in her possession while her husband possessed the stolen purse.

22 Therefore, because the district court provided a reasonable explanation for the
23 verdicts, we conclude that it did not abuse its discretion when it denied her motion
for a new trial. Further, because the verdicts were consistent, we conclude that
Saintal's due process and Sixth Amendment rights were not violated.

ECF No. 13-2 at 232-233. This ruling was reasonable.

As was discussed in Ground Seven, there was sufficient evidence demonstrating that
Saintal's stole merchandise with an aggregate value of more than \$250.00. With regard to the
possession of stolen merchandise, Officer Terry testified that the "swingpack" purse was found
in Saintal's husband's vehicle and the wallet was found in her vehicle. ECF No. 14-2 at 218,
213. The Supreme Court of Nevada reasonably concluded that it was logical for the jury to have
determined that Saintal was guilty of possessing the stolen wallet, whose value was under
\$250.00, found in her vehicle but not guilty of possessing the purse, which was found in her

1 husband's vehicle. *Masoner v. Thurman*, 996 F.2d 1003, 1005 (9th Cir. 1993) ("If based on the
2 evidence presented to the jury any rational fact finder could have found a consistent set of facts
3 supporting both convictions, due process does not require that the convictions be vacated."); *see*
4 also ECF No. 14-2 at 238 (Officer Perry's testimony that he never saw Saintal in possession of
5 the purse). Accordingly, the Supreme Court of Nevada's conclusion that the verdicts were
6 consistent is reasonable. I deny Saintal federal habeas relief for Ground Three.

7 **G. Ground Nine**

8 In Ground Nine, Saintal argues that her federal constitutional rights were violated when
9 the trial judge refused to instruct the jury regarding law enforcement's failure to document and
10 collect evidence. ECF No. 29 at 38. In Saintal's appeal of her conviction, the Supreme Court of
11 Nevada held:

12 Saintal contends that the district court erred when it refused to give her proposed
13 jury instruction that stated that if the jury determined that the police were negligent
14 in failing to obtain and preserve evidence, then the jury should presume that the
unobtained evidence would have been favorable to Saintal.

15 When conducting a criminal investigation, "police officers generally have no duty
16 to collect all potential evidence." *Randolph v. State*, 117 Nev. 970, 987, 36 P.3d
17 424, 435 (2001). However, a failure to gather evidence warrants a sanction if
18 (1) the defense proves that the evidence was material and (2) the district court
determines that the failure to gather the evidence resulted from gross negligence or
19 bad faith. *Id.* If the State's failure to obtain material evidence was caused by gross
negligence, then "the defense is entitled to a presumption that the evidence would
20 have been unfavorable to the State." *Id.* Conversely, if the State's failure to obtain
material evidence resulted from mere negligence, then "no sanctions are imposed,
21 but the defendant can examine the State's witnesses about the investigative
deficiencies." *Id.*

22 The district court denied Saintal's proposed jury instruction because it determined
23 that, pursuant to *Randolph*, the instruction was only proper if Saintal demonstrated
that the police had been grossly negligent in failing to obtain the evidence. The
district court found that the police had merely been negligent and, therefore,
Saintal's proposed jury instruction was improper. Because the district court
correctly applied the law as stated in *Randolph*, we conclude that it did not abuse

1 its discretion when it denied Saintal's proposed jury instruction concerning her
2 theory of the case.

3 ECF No. 13-2 at 237-38. This ruling by the Supreme Court of Nevada was not objectively
4 unreasonable.

5 Issues relating to jury instructions are not cognizable in federal habeas corpus unless they
6 violate due process. *Estelle v. McGuire*, 502 U.S. 62, 72 (1991); *see also Gilmore v. Taylor*, 508
7 U.S. 333, 342 (1993) (“[W]e have never said that the possibility of a jury misapplying state law
8 gives rise to federal constitutional error.”); *Henderson v. Kibbe*, 431 U.S. 145, 154 (1977)
9 (explaining that the question is “‘whether the ailing instruction by itself so infected the entire
10 trial that the resulting conviction violates due process’, . . . not merely whether ‘the instruction is
11 undesirable, erroneous, or even universally condemned’” (quoting *Cupp v. Naughten*, 414 U.S.
12 141, 146-47 (1973))). When reviewing jury instructions, the court evaluates the instructions as a
13 whole. *Estelle*, 502 U.S. at 72 (explaining that a challenged instruction “‘may not be judged in
14 artificial isolation,’ but must be considered in the context of the instructions as a whole and the
15 trial record” (quoting *Cupp*, 414 U.S. at 147)). Even if instructions contain a constitutional error,
16 the court must then “‘apply the harmless-error analysis mandated by *Brecht*[v. *Abrahamson*, 507
17 U.S. 619 (1993)].” *Calderon v. Coleman*, 525 U.S. 141, 146 (1998).

18 Saintal contends that her due process rights were violated because the excluded jury
19 instruction deprived her of “a meaningful opportunity to present a complete defense.” *California*
20 *v. Trombetta*, 467 U.S. 479, 485 (1984). The excluded jury instruction stated: “If you determine
21 that the police were negligent in failing to obtain and preserve the swing pack, wallet or store
22 security video tape of this incident, Ms. Saintal is entitled to the presumption that the evidence
23 not obtained would have been favorable to the defense.” ECF No. 13-2 at 39.

1 During the discussion of this proposed jury instruction, the State explained that the police
2 did not photograph the purse or the wallet, which may have been important because “[t]here’s
3 [serial] numbers inside the purses.” ECF No. 14-2 at 138-139. The State also explained that
4 “[t]here was surveillance video, but the store never gave it to the police and the police never
5 asked if they had store video, so the officer didn’t even know.” *Id.* at 138. The State explained
6 that the surveillance video did not show Saintal doing anything. *Id.* at 140. The trial judge held
7 that Saintal would be entitled to her proposed jury instruction only if she could prove that the
8 police officer acted with gross negligence. *Id.* at 142. When Saintal’s trial counsel explained that
9 it was her position that the police officer acted with gross negligence, the trial judge responded,
10 “Not a chance.” *Id.* The trial judge elaborated, “I think they may have been negligent, but I don’t
11 see any gross negligence here.” *Id.* at 143.

12 The Supreme Court of Nevada held that the trial judge did not abuse his discretion in
13 denying the proposed jury instruction. This holding was reasonable. “[U]nless a criminal
14 defendant can show bad faith on the part of the police, failure to preserve potentially useful
15 evidence does not constitute a denial of due process of law.” *Arizona v. Youngblood*, 488 U.S.
16 51, 58 (1988). Although law enforcement was negligent in not photographing the wallet or the
17 purse and in not collecting the surveillance video, Saintal cannot show bad faith. Officer Perry
18 testified that “to the best of [his] knowledge there was [sic] no serial numbers on” the wallet or
19 the purse and that he was never told that “factory outlet items are routinely marked . . . [with] a
20 secret mark on the inside of the purse to identify it.” ECF No. 14-2 at 239-40. Officer Perry also
21 testified that he did not remember observing any security cameras in the store, that he “know[s]
22 that in the outlet mall the average stores there do not have security cameras,” and that the store
23 manager never mentioned the surveillance video to him. *Id.* at 240-41. Because Officer Perry

1 was not aware that the wallet and purse may have identifying marks, it cannot be concluded that
2 his failure to take pictures of the wallet and purse amounted to bad faith. *See Youngblood*, 488
3 U.S. at 58. Similarly, because Officer Perry was not alerted to the fact that the store had security
4 cameras, it cannot be concluded that his failure to secure the surveillance footage amounted to
5 bad faith. *Id.* Accordingly, Saintal has not shown that the exclusion of her proposed jury
6 instruction violated due process. *Estelle*, 502 U.S. at 72. I deny Saintal federal habeas corpus
7 relief for Ground Nine.

8 **H. Ground Ten**

9 In Ground Ten, Saintal argues that the cumulative effect of her trial counsel's errors
10 violated her federal constitutional rights. ECF No. 29 at 40. In her appeal of the denial of her
11 state habeas petition, the Supreme Court of Nevada held: "As appellant fails to demonstrate
12 deficiency or prejudice for any of her claims, she fails to demonstrate cumulative errors of
13 counsel caused her to receive ineffective assistance of counsel. Therefore, the district court did
14 not err in denying this claim." ECF No. 13-5 at 193. This ruling was reasonable as Saintal has
15 failed to demonstrate any errors. I deny Saintal federal habeas corpus relief for Ground Ten.⁴

16 **IV. CERTIFICATE OF APPEALABILITY**

17 This is a final order adverse to Saintal. Rule 11 of the Rules Governing Section 2254
18 Cases requires me to issue or deny a certificate of appealability (COA). I have evaluated the
19

20 ⁴ Saintal requested that I conduct an evidentiary hearing "where [she] can offer proof
21 concerning the allegations [in her] Petition." ECF No. 29 at 41; ECF No. 59 at 30. She fails to
22 explain what evidence would be presented at an evidentiary hearing. I have determined that
23 Saintal is not entitled to relief, and neither further factual development nor any evidence that may
be proffered at a hearing would affect my decision. I deny Saintal's request for an evidentiary
hearing.

1 claims in the petition for suitability for the issuance of a COA. *See* 28 U.S.C. § 2253(c); *Turner*
2 *v. Calderon*, 281 F.3d 851, 864-65 (9th Cir. 2002). A COA may issue only when the petitioner
3 “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).
4 With respect to claims rejected on the merits, a petitioner “must demonstrate that reasonable
5 jurists would find the district court’s assessment of the constitutional claims debatable or
6 wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880,
7 893 & n.4 (1983)). Applying these standards, a certificate of appealability is unwarranted.

8 **V. CONCLUSION**

9 I THEREFORE ORDER that the Amended Petition for Writ of Habeas Corpus Pursuant
10 to 28 U.S.C. § 2254(d) (**ECF No. 29**) is **DENIED**.

11 I FURTHER ORDER that Saintal is denied a certificate of appealability.

12 I FURTHER ORDER the Clerk of Court to substitute Dwight Neven for Sheryl Foster as
13 the respondent warden on the docket for this case.

14 I FURTHER ORDER the Clerk of the Court to enter judgment accordingly and close this
15 case.

16 Dated this 17th day of January, 2020.

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18 _____
19 ANDREW P. GORDON
20 UNITED STATES DISTRICT JUDGE
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